A

MOHD NAZRI HJ DIN

v.

DATO' SERI RAJA AHMAD ZAINUDDIN RAJA HJ OMAR & ORS

B

FEDERAL COURT, PUTRAJAYA
RICHARD MALANJUM CJ (SABAH & SARAWAK)
AUGUSTINE PAUL FCJ
ZULKEFLI MAKINUDDIN FCJ
C [APPEAL NO: 01-(f)-12-2008(A)]
24 MARCH 2009

ELECTION: *Petition - Allegation of corrupt practice - Bribery - Pleadings - Whether petition did not contain material facts as required*
D *by r. 4(1)(b) and (4)(3) Election Petition Rules 1954*

In the General Election held on 8 March 2008 the first respondent was the Barisan Nasional candidate for the state seat of Kubu Gajah, Perak. He was declared as the candidate duly elected with a majority of 66 votes. The petitioner/appellant, the
E candidate for Parti Islam Se Malaysia for the seat, filed the petition pursuant to s. 34(a) of the Election Offences Act 1954 ('Act') on the grounds that the first respondent had committed four offences of bribery under s. 10(c) of the Act and two offences of treating
F under s. 8 of the Act. The petition was dismissed by the High Court, resulting in the present appeal by the appellant. During the hearing of the appeal, the appellant proceeded only with the first three grounds in the petition. The three complaints (the First Complaint, Second Complaint and Third Complaint respectively)
G were related to promises and gifts made in return for votes. The thrust of the appeal herein was against the ruling of the High Court that the petition did not contain the material facts as required by r. 4(1)(b) and (4)(3) of the Election Petition Rules 1954 ('Rules').

H **Held (dismissing the appeal)**
Per Augustine Paul FCJ delivering the judgment of the court:

(1) On the facts, the First Complaint which related to a promise
I made in return for votes was defective as it did not set out the full text of what the first respondent said. It only identified a part of it, and the part left out could well have

neutralised the part that had been pleaded. The Second Complaint, related to a gift of sacks of rice, did not state that the gift was made in return for votes unlike the facts pleaded in the other two complaints. The Third Complaint related to a promise of public auction in return for votes made to a crowd of about 300 people in front of 37 named persons. Such a promise did not amount to a corrupt practice. All the three complaints also had a common defect. In the First Complaint, there was no statement that the 37 persons who had been identified were registered voters meaning that none of the persons to whom the promise was made had been identified. In the case of the Second Complaint the distribution of the sacks of rice was done in front of the 37 named persons. There was also no statement that the sacks of rice were also given to them. This meant that none of the persons to whom the gift was made had been identified. The Third Complaint merely stated that the promise was made in front of the 37 named persons and not to them, which again meant that none of the persons to whom the promise was made had been identified. Thus in all the three complaints the promise or gift, as the case may be, was not made to any particular voter or voters but to a crowd, and no distinction was made between the voters who were favourably inclined towards the first respondent and those who were not. Therefore, the facts pleaded in respect of the three complaints did not disclose the commission of an offence under s. 10(c) of the Act. The result was that they did not comply with the requirements of r. 4(1)(b) and (4)(3) of the Rules since the facts pleaded were insufficient to sustain the prayer. *Gan Joon Zin v. Fong Kui Lun & Ors* (foll). (paras 9 & 10)

Bahasa Malaysia *Translation Of Headnotes*

Dalam Pilihanraya Umum yang diadakan pada 8 Mac 2008 responden pertama merupakan calon Barisan Nasional untuk kerusi negeri Kubu Gajah, Perak. Beliau telah diisytiharkan sebagai calon yang dipilih dengan majoriti sebanyak 66 undi. Pempetisyen/perayu, calon Parti Islam Se Malaysia untuk kerusi itu, memfail petisyen menurut s. 34(a) Akta Kesalahan Pilihanraya 1954 ('Akta') atas alasan bahawa responden pertama telah melakukan empat kesalahan penyogokan di bawah s. 10(c) Akta dan dua kesalahan membelanjai di bawah s. 8 Akta. Petisyen itu ditolak oleh Mahkamah Tinggi, mengakibatkan rayuan ini oleh perayu. Semasa

perbicaraan rayuan itu, perayu meneruskan dengan hanya tiga alasan dalam petisyen itu. Ketiga-tiga aduan (Aduan Pertama, Aduan Kedua dan Aduan Ketiga masing-masing) berhubungan dengan janji-janji dan pemberian yang telah dibuat sebagai balasan untuk mendapat undian. Teras rayuan ini ialah terhadap perintah Mahkamah Tinggi bahawa petisyen itu tidak mengandungi fakta-fakta material seperti yang diperuntukkan oleh k. 4(1)(b) dan (4)(3) Kaedah-kaedah Petisyen Pilihanraya 1954 ('Kaedah').

Diputuskan (menolak rayuan)

Oleh Augustine Paul HMP menyampaikan penghakiman mahkamah:

(1) Berdasarkan fakta, Aduan Pertama yang berkaitan dengan satu janji yang dibuat sebagai balasan untuk mendapat undi adalah cacat kerana ia tidak menyatakan teks penuh apa yang telah disebut oleh responden pertama. Ia hanya mengecamkan sebahagian darinya, dan bahagian yang tertinggal itu mungkin boleh menjadikan bahagian yang telah diplid itu tidak berkesan. Aduan Kedua, berhubungan dengan suatu pemberian guni-guni beras, tidak menyatakan bahawa pemberian itu telah dibuat sebagai balasan untuk mendapat undi yang tidak serupa dengan fakta-fakta yang diplid dalam kedua-dua aduan lain. Aduan Ketiga berkenaan dengan sesuatu janji bagi lelong awam sebagai balasan untuk mendapat undi yang dibuat kepada seramai lebih kurang 300 orang di depan 37 orang yang dinamakan. Janji sebegitu tidak bermaksud bahawa perbuatan rasuah dilakukan. Kesemua ketiga-tiga aduan juga mempunyai kecacatan yang sama. Dalam Aduan Pertama, tiada apa-apa pernyataan bahawa 37 orang yang telah dikenalpasti itu telah dicam sebagai pengundi berdaftar yang bermaksud bahawa tiada seorang daripada orang yang dijanji itu telah dikenalpasti. Dalam kes Aduan Kedua pengagihan guni-guni beras dibuat di depan 37 orang yang dinamakan itu. Tiada apa-apa pernyataan bahawa guni-guni beras telah juga diberi kepada mereka. Ini bererti bahawa tiada sesiapa pun yang mendapat pemberian itu dapat dikenalpasti. Aduan Ketiga hanya menyatakan bahawa janji itu dibuat di hadapan 37 orang yang dinamakan itu dan bukan kepada mereka, yang bererti sekali lagi bahawa tidak seorang pun dari orang yang dijanji itu telah pun dicamkan. Oleh itu, dalam kesemua ketiga-tiga aduan itu janji atau pemberian, seperti mana kesnya, tidak dibuat kepada mana-mana pengundi atau pengundi-pengundi

tetapi kepada orang ramai, dan tidak ada apa-apa perbezaan di antara pengundi yang berpihak ke responden pertama dan mereka yang tidak. Oleh itu, fakta-fakta yang telah diplid berkenaan dengan ketiga-tiga aduan itu tidak mendedahkan perbuatan kesalahan itu di bawah s. 10(c) Akta. Ini bermaksud bahawa mereka tidak mematuhi keperluan k. 4(1)(b) dan (4)(3) Kaedah kerana fakta-fakta yang diplid itu tidak mencukupi untuk mengekalkan rayuan itu. *Gan Joon Zin v. Fong Kui Lun & Ors* (diikuti).

Case(s) referred to:

Dr Shafie Abu Bakar v. Pegawai Pengurus Pilihanraya N26, Bangi & Ors & Other Petitions (No 2) [2005] 5 CLJ 349 HC ***(refd)***

Gan Joon Zin v. Fong Kui Lun & Ors [2004] 4 CLJ 729 FC ***(foll)***

Ghasi Ram v. Dal Singh [1968] AIR SC 1191 ***(refd)***

Kalya Singh v. Genda Lal [1975] AIR SC 1634 ***(refd)***

Patau Rubis v. Patrick Uren & Anor [1984] 1 CLJ 51; [1984] 2 CLJ (Rep) 348 ***(refd)***

Re Pengkalan Kota Bye-Election Teoh Teck Huat v. Lim Kean Siew & Anor [1981] 1 LNS 1 ***(refd)***

Wan Daud Wan Jusoh v. Mohamed Hj Ali and Other Cases [1988] 2 MLJ 384 ***(refd)***

Legislation referred to:

Election Offences Act 1954, ss. 8, 10(c), 32(c), 34(a)

Election Petition Rules 1954, rr. 4(1)(b), (4)(3)

Representation of the People Act 1951 [Ind], s. 123(1)

Other source(s) referred to:

Rama Devi and Mendiratta, *Election Laws, Practice and Procedure,* p 790

For the appellant - Mohamed Hanipa Maidin (Aminuddin Zulkipli, Zulqarnain Lukman, Zulmi Sabri, Yusnita Yusuf with him); M/s Zainul Rijal Talha & Amir

For the respondents - Datuk Mohd Hafarizam Harun (Badrul Hishah Abd Wahap & Shahhir Ab Razak with him); M/s Ong-Hanim & Badrul

[Appeal from High Court, Ipoh; Election Petition No: 26-PP-1-2008]

Reported by Suresh Nathan

JUDGMENT

Augustine Paul FCJ:

[1] This appeal relates to an election petition which was dismissed by the High Court.

[2] In the General Election held on 8 March 2008 the first respondent was the Barisan Nasional candidate for the state seat of Kubu Gajah, Perak. He was declared as the candidate duly elected with a majority of 66 votes. The petitioner was the candidate for Parti Islam Se Malaysia for the seat. He filed the petition pursuant to s. 34(a) of the Election Offences Act 1954 ("the Act") on the grounds that the first respondent had committed four offences of bribery under s. 10(c) of the Act and two offences of treating under s. 8 of the Act. The petition was dismissed by the High Court. During the hearing of the appeal learned counsel for the appellant said that he is proceeding only with the first three grounds in the petition.

[3] The three grounds in the petition relied upon by the appellant before us are as follows:

1. Paragraph 4.1.1 of the Petition

(This ground shall hereafter be referred to as the First Complaint).

4.1.1 Penyogokan (Seksyen 10(c) Akta Kesalahan Pilihan Raya 1954)

(A) Pempetisyen kamu menyatakan bahawa perbuatan rasuah telah dilakukan oleh Responden Pertama sendiri semasa pilihan raya tersebut dengan memberikan janji kepada pengundi-pengundi berdaftar di dalam Dewan undangan Negeri N 06 Kubu Gajah (selepas daripada ini akan dirujuk sebagai DUN tersebut) bagi mendapatkan undi pengundi-pengundi tersebut yang mana ianya bercanggah dengan Seksyen 10(c) dibaca bersama Seksyen 32(c) Akta Kesalahan Pilihan Raya 1954. Butir-butirnya adalah seperti berikut:

Butiran Fakta

i. Dalam melakukan rasuah tersebut, pada lebih kurang pukul 5.00 hingga 7.00 petang pada 4/3/2008 Responden Pertama telah berkempen di perkarangan rumah kediaman seorang lelaki India bernama Kandasamy a/l Ramasamy yang beralamat di No. 340 Kg Lembah Keluang, Kubu Gajah, 34130 Selama, Perak Darul Ridzuan, dihadapan seramai lebih kurang 50 hingga 100 orang pengundi berdaftar dalam bahagian pilihan raya N 06 Kubu Gajah, dengan mengatakan, "... undi kasi Barisan Nasional menang, apa-apa mintak kita boleh kasi". Sambil

mengetuk dengan keras sebuah meja dihadapannya, dengan mengatakan "Sumpah!". Kata-kata Responden Pertama tersebut telah diucapkan dihadapan orang ramai termasuk penama-penama berikut: (This was followed by the names and NRIC numbers of 37 persons).

2. Paragraph 4.1.2 of the Petition

(This ground shall hereafter be referred to as the Second Complaint).

4.1.2 Penyogokan (Seksyen 19(c) Akta Kesalahan Pilihan Raya 1954

(B) Pempetisyen kamu menyatakan bahawa perbuatan rasuah telah dilakukan semasa pilihan raya tersebut oleh ejen Responden Pertama dengan pengetahuan dan persetujuan Responden Pertama dengan memberikan pemberian untuk mendapatkan undi pengundi-pengundi tersebut di DUN tersebut yang mana perbuatan rasuah tersebut bercanggah dengan Seksyen 10(c) dibaca bersama Seksyen 32(c) Akta Kesalahan Pilihan Raya 1954 sebagaimana butiran berikut:

Butiran Fakta

i. Dalam melakukan rasuah tersebut, pada lebih kurang pukul 5.00 hingga 7.00 petang pada 4/3/2008, bertempat di perkarangan sebuah rumah kediaman seorang lelaki India yang dikenali sebagai Kandasamy a/l Ramasamy dan beralamat di No. 340, Kampung Lembah Kluang, 3410 Selama, Perak, seorang petugas dan ejen Responden Pertama yang bernama Gopal a/l Subramaniam telah menyebabkan lapan puluh (80) kampit beras seberat lima (5) kilogram setiap satu diagih-agihkan kepada hadirin yang berada di majlis kempen tersebut. Pengagihan tersebut berlaku dalam kehadiran Responden Pertama tersebut dan ketika petugas dan ejen Responden Pertama tersebut mempengerusikan majlis kempen Responden Pertama tersebut. Pengagihan kampit-kampit beras tersebut dilakukan di hadapan khalayak ramai termasuk penama-penama berikut: (This was followed by the names and NRIC numbers of 37 persons).

3. Paragraph 4.1.3 of the Petition

(This ground shall hereafter be referred to as the Third Complaint).

4.1.3 Penyogokan (Seksyen 10(c) Akta Kesalahan Pilihan Raya 1954)

(C) Pempetisyen kamu menyatakan bahawa perbuatan rasuah telah dilakukan oleh Responden Pertama sendiri semasa pilihan raya tersebut dengan memberikan janji kepada pengundi-pengundi berdaftar di dalam DUN tersebut bagi mendapatkan undi pengundi-pengundi tersebut yang mana ianya bercanggah dengan Seksyen 10(c) dibaca bersama Seksyen 32(c) Akta Kesalahan Pilihan Raya 1954. Butir-butirnya adalah seperti berikut:

Butiran Fakta

i. Dalam melakukan rasuah tersebut, pada lebih kurang pukul 5.00 hingga 7.00 petang pada 28/02/2008, Responden Pertama telah berkempen di Kuil Seri Muthumariaman Ladang Hibernia, Jalan Taiping Kubu Gajah, 34130 Selama, Perak, dihadapan lebih kurang 300 orang pengundi berdaftar dalam bahagian pilihan raya NO6 Kubu Gajah, Perak dengan mengatakan: "Kalau saya menang, janji akan beri bantuan baik pulih kuil", dan "minta undi BN, kalau menang, bagi bangunan sekolah di kawasan Selama". Kata-kata tersebut telah diucapkan oleh Responden Pertama di hadapan pengundi-pengundi di mana di antara mereka adalah seperti berikut: (this was followed by the names of NRIC numbers of 37 persons).

[4] At the hearing in the High Court the learned judge struck off the petition against the second and third respondents on the application of their counsel. The first respondent raised three preliminary objections and proceeded with only two. They are as follows:

(i) Pempetisyen telah gagal mematuhi kehendak kaedah 15 Kaedah-Kaedah Petisyen Pilihanraya 1954 berdasarkan alasan-alasan bahawa Notis Pengemukaan Petisyen dan Petisyen dengan sengaja tidak diserahkan oleh Pempetisyen dalam tempoh 15 hari dari tarikh pemfailan petisyen;

(ii) Pempetisyen telah gagal mematuhi kehendak kaedah 4(4) Kaedah-Kaedah Petisyen Pilihanraya 1954 berdasarkan alasan bahawa Petisyen tersebut tidak berasaskan kerana mana-mana alasan sepertimana yang diperuntukan oleh Seksyen 32 Akta Kesalahan Pilihan Raya 1954 (Akta 5).

The first objection was dismissed by the learned judge. With regard to the second objection the learned judge referred to cases such as *Patau Rubis v. Patrick Uren & Anor* [1984] 1 CLJ 51; [1984] 2 CLJ (Rep) 348, *Wan Daud bin Wan Jusoh v. Mohamed bin Haji Ali and Other Cases* [1988] 2 MLJ 384 and *Dr Shafie Abu Bakar v. Pegawai Pengurus Pilihanraya N26, Bangi & Ors & Other Petitions (No 2)* [2005] 5 CLJ 349 and took the view that the petition must contain the material facts and sufficient particulars of the complaints pursuant to r. 4(1)(b) and r. 4(4)(3) of the Election Petition Rules 1954 ("r. 4(1)(b) and r. 4(4)(3)" respectively). He then considered whether these requirements have been complied with in the pleading of, *inter alia*, the three complaints in the following terms:

(1) First Complaint

Rumusan

Fakta material yang tidak dijelaskan ialah:

- siapakah 50-100 orang pengundi berdaftar itu.
- tidak seorang pun dari pengundi-pengundi itu dinamakan.
- dalam aduan dan fakta perkataan pengundi dan orang ramai digunakan bersilihganti. Adakah mereka ini pengundi ataupun hadirin sahaja dan bukannya pengundi.
- adakah mereka (sekiranya mereka pengundi berdaftar) pengundi berdaftar di DUN N06 Kubu Gajah
- 37 nama yang dinyatakan dalam aduan hanyalah sebahagian daripada orang ramai yang hadir. Tidak dinyatakan adakah 37 penama ini pengundi berdaftar di N06.
- tanpa kenyataan penuh yang diucapkan diplidkan, ada kemungkinan ucapan itu dipetik di luar konteks.

(2) Second Complaint

Rumusan

- siapakah hadirin ini dan adakah mereka pengundi berdaftar di DUN N06. Tiada nama diberikan untuk menunjukkan mereka adalah pengundi di DUN tersebut.
- 37 penama yang dinamakan hanyalah khalayak ramai, tidak dinyatakan adakah mereka ini pengundi berdaftar di DUN N06 dan adakah mereka telah diberikan beras tersebut.

A – di dalam aduan tersebut pengundi tetapi dalam butiran fakta disebut sebagai hadirin. Ini menimbulkan keraguan adakah mereka ini pengundi ataupun hadirin sahaja.

(3) Third complaint

B Rumusan

Fakta material tidak dinyatakan:

– siapakah 300 (atau sebahagiannya) yang dikatakan adalah pengundi berdaftar di DUN N06

C – 37 penama yang dikatakan pengundi itu, adakah mereka pengundi berdaftar di DUN N06

– walaupun dalam aduan ini 37 penama dikatakan adalah pengundi tetapi dalam aduan 4.1.1 dan 4.1.2 penama yang sama ini tidak disebut sebagai pengundi sebaliknya dinamakan sebagai hadirin sahaja. Ini adalah percanggahan D yang material

– kenyataan penuh tidak diplidkan.

E The learned judge then referred to *Re Pengkalan Kota Bye-Election Teoh Teck Huat v. Lim Kean Siew & Anor* [1981] 1 LNS 1 and ruled that the second objection raised by the first respondent has merit and, accordingly, dismissed the petition with costs. This appeal is by the petitioner.

F **[5]** The thrust of the appeal before us is against the ruling of the High Court that the petition did not contain the material facts as required by r. 4(1)(b) and r. 4(4)(3). It thus becomes necessary to first consider the requirements of the two rules. They read as follows:

G Rule 4(1)(b)

4(1) An election petition shall contain the following statements:

(a) …

H (b) it shall state the holding and result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

Rule 4(4)(3)

I 4(4) The following form, or one to the like effect, shall be sufficient:

(1) …

(2) …

(3) And your petitioners say that (here state the concise facts and grounds on which the petitioners rely).

[6] The use of the word "shall" in the rules means that the requirements of the two rules are mandatory. The extent to which the facts and grounds relied upon must be set out in a petition is explained by the use of the words "briefly" in r. 4(1)(b) and "concise" in r. 4(4)(3). The word "briefly" is the adverb of "brief" which is defined in *Webster"s New World Dictionary* as, *inter alia*,

> a concise statement of the main points of a law case, usually filed by counsel for the information of the court

And the word "concise" as

> brief and to the point; short and clear. Concise implies the stating of much in few words, by removing all superfluous or expanded details.

The scope and width of these two words must be read with the requirement of r. 4(1)(b) that the facts and grounds relied on must be such as to "… sustain the prayer" and "… on which the petitioners rely" as stipulated in r. 4(4)(3). A prayer can be sustained only by a statement of the facts necessary to establish it. They will be the facts on which a petitioner will rely. Thus there must be sufficient facts to constitute a cause of action as they will form the basis of the prayer. It is therefore abundantly clear that the facts to be pleaded pursuant to r. 4(1)(b) and r. 4(4)(3) must be such as to make out a case for the petitioner. In other words all the material facts must be pleaded though a concise statement of them will suffice. Failure to comply with this mandatory requirement will render the petition defective (see *Gan Joon Zin v. Fong Kui Lun & Ors* [2004] 4 CLJ 729). The facts that must be pleaded will depend on the election offence alleged to have been committed and the elements that are required to be established in respect of it.

[7] The grounds on which a petition is based must fall within the ambit of s. 32 of the Act and in the three complaints in this case it is s. 32(c) ("s. 32(c)") read with s. 10(c) of the Act ("s. 10(c)"). They read as follows:

A Section 32(c)

32. The election of a candidate at any election shall be declared to be void on an election petition on any of the following grounds only which may be proved to the satisfaction of the Election Judge:

B

(a) …

(b) ……..

(c) that a corrupt practice or illegal practice was committed in
C connection with the election by the candidate or with his knowledge or consent, or by any agent of the candidate:

Section 10(c)

10. The following persons shall be deemed guilty of the offence
D of bribery:

(a) …

(b) …

E (c) every person who, before, during or after an election, directly or indirectly, makes any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person in order to induce such person to procure or endeavour to procure the election of any person, or the vote of any elector or voter at any election.

F

[8] The facts to be pleaded by the petitioner in this case would thus be the elements that constitute the offence of bribery within the meaning of s. 10(c). Essentially they are governed by the use of the words "… to or for any person in order to induce such
G person …" in s. 10(c). The making of any gift, loan, offer etc "… to or for any person …" means that it must be made to a particular person. The purpose of making the gift, loan, offer etc is determined by the use of the word "… induce …". It is defined in *Black's Law Dictionary* 6th edn as

H

To bring on or about, to affect, cause, to influence to an act or course of conduct, lead by persuasion or reasoning, incite by motives, prevail on.

I

In *Kalya Singh v. Genda Lal* [1975] AIR SC 1634 the Indian Supreme Court said that the dictionary meaning of the word "induce" is to "prevail on, persuade" and the gratification offered or promised as inducement must have some connection or reflection, direct or indirect, in persuading the voter to vote or refrain from voting. As Abdoolcader J (as he then was) said in *Re Pengkalan Kota Bye-Election Teoh Teik Huat v. Lim Kean Siew and Anor* [1981] 1 LNS 1:

> … in a corrupt practice such as bribery which is alleged in this case the corrupt intention and corrupt inducement to the electors or voters to vote or refrain from voting must exist. The corrupt practice of bribery which is a criminal offence by statute must be strictly proved beyond all reasonable doubt by clear and unequivocal evidence, and the inducement to vote or refrain from voting must be exercised upon one or more electors or voters who must be identified as the objects to whom it was made or addressed.

In this regard useful reference may be made to s. 123(1) of the Indian Representation of the People Act 1951 which is similar to our s. 10(c). The section reads as follows:

> 'Bribery', that is to say:
>
> (A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing:
>
> (a) a person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate at an election, or
>
> (b) an elector to vote or refrain from voting at an election, or as a reward to:
>
> (i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or
>
> (ii) an elector for having voted or refrained from voting;

In commenting on this section *Election Laws, Practice and Procedure* by Rama Devi and Mendiratta says at p. 790:

A But it should be clearly borne in mind that it is not every gift, offer or promise of gratification to voters which may attract the provisions of s. 123(1). In such gift, offer or promise, there should be an element of bargaining for votes. In other words, any such gift, offer or promise of gratification should be made asking for the votes in return. The Supreme Court held in *Ghasi Ram v. Dal Singh* [1968] AIR SC 1191 that an offer or promise not made to any particular voter or voters but to the general body or residents, without distinguishing between those who were favourably inclined and those who were not, was not a corrupt practice. The gist of the corrupt practice lay in attempting to do something for those who were opposed to the candidate with a view to changing their votes and as a bargain for votes. The apex court reiterated that view in Om Prabha Jain v. Abnash Chand, 1968 AIR SC 1083 and *Dev Raj v Bhagwan Das*, [1971] AIR SC 241 and that view still holds the field. But a bargain for the purposes of s. 123(1) does not mean that the candidate makes an offer and the voter accepts it in the sense that he promises to vote. It is enough if the candidate or his agent makes the gift, offer or promise on that condition. If a candidate or his agent pays money to a voter saying that he wants him to vote for him, it is a bargain for the purposes of s. 123(1). It is not necessary that the voter should say that he would vote and thereafter the candidate or his agent should pay the money. Even in such a case, the voter after receiving the money might or might not vote for him the corrupt practice shall be deemed to have been committed (*Iqbal Singh v. Gurdas Singh* [1976] AIR SC 27).

It follows that the making of the gift, loan, offer etc must be for the purpose of changing the mind of the voters who have been identified. This is logical as the question of inducing a person to do something simply cannot arise if he has already decided to do the very thing.

[9] It is now appropriate to consider whether the requirements of r. 4(1)(b) and r. 4(4)(3) have been complied with by the appellant. The first complaint which relates to a promise made in return for votes is defective as it does not set out the full text of what the first respondent said. It only identifies a part of it. The part left out could well have neutralized the part that has been pleaded. The second complaint does not state that the gift was made in return for votes unlike the facts pleaded in the other two complaints. The third complaint relates to a promise of public action in return for votes made to a crowd of about 300 people in front of the 37 named persons. Such a promise does not

amount to a corrupt practice. As Abdoolcader, J (as he then was) said in *Re Pengkalan Kota Bye-Election Teoh Teik Huat v Lim Kean Siew & Anor* [1981] 1 LNS 1:

> The High Court of Punjab held in *Balwant Rai Tayal v. Bishan Saroop & Anor* 17 ELR 101, that a candidate can make a promise to Harijans of a locality while canvassing for votes that he would do his best to help them in the matter of retaining an old mosque as a temple and for getting land for building houses and that this does not amount to bribery.

It must be observed that all the three complaints also have a common defect. In the first complaint there is no statement that the 37 persons who have been identified are registered voters. This means that none of the persons to whom the promise was made have been identified. In the case of the second complaint the distribution of the sacks of rice was done in front of the 37 named persons. There is also no statement that the sacks of rice were also given to them. This means that none of the persons to whom the gift was made have been identified. The third complaint merely states that the promise was made in front of the 37 named persons and not to them. Again this means that none of the persons to whom the promise was made have been identified. Thus in all the three complaints the promise or gift, as the case may be, was not made to any particular voter or voters but to a crowd and no distinction was made between the voters who were favourably inclined towards the first respondent and those who were not. In this regard it is necessary to refer to *Ghasi Ram v. Dal Singh* [1968] AIR SC 1191 cited in the passage from *Election Laws Practice and Procedure* by Rama Devi and Mendiratta reproduced earlier where Hidayatullah J says at p 1195:

> In *S. Mahar Singh v. Umrao Singh,* AIR [1961] Punj 244 the Punjab High Court held that a candidate making a promise to get the grievances of certain refugees as a body remedied and even getting the Revenue Minister to reinforce his promise was not corrupt practice. It was pointed out that the promise was not made to any particular voter or voters but to the general body of residents without distinguishing between those who were favourably inclined and those not. The gist of the corrupt practice, therefore, lay in attempting to do something for those opposed to the candidate with a view to changing their votes, and as a bargain for votes.

A **[10]** The facts pleaded in respect of the three complaints thus do not disclose the commission of an offence under s. 10(c). The result is that they do not comply with the requirements of r. 4(1)(b) and r. 4(4)(3) as the facts pleaded are insufficient to sustain the prayer.

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[11] My learned brothers Richard Malanjum CJSS and Zulkefli Ahmad Makinuddin FCJ have read this judgment in draft and agree with it. The appeal is therefore dismissed with costs. Deposit to respondents.

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